**Before the**
**FEDERAL COMMUNICATIONS COMMISSION**
**Washington, D.C. 20554**

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| In the Matter of | ) | |
| | ) | CC Docket No. 01-92 |
| | ) | |
| Developing a Unified Intercarrier Compensation Regime | ) | |
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# REPLY COMMENTS OF TRITON PCS LICENSE COMPANY, L.L.C.


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## SUMMARY

Triton PCS ("Triton") is a regional provider of Commercial Mobile Radio Service ("CMRS") in the southeastern United States. Triton currently has interconnection agreements with nearly twenty incumbent Local Exchange Carriers ("LECs") for the exchange and reciprocal transport and termination of CMRS and LEC traffic in Triton's service areas.

The Commission cannot wait until the end of this broad and complex proceeding to address CMRS-incumbent LEC interconnection. The record supports swift Commission action to clarify the application of its existing interconnection rules and policies to CMRS and incumbent LEC interconnection. Incumbent LECs have little incentive to cooperate with CMRS providers in establishing reasonable interconnection and the record in this proceeding illustrates that many ILECs ignore current rules by continuing to impose one-way access charges on the termination of CMRS traffic that originates in the same Major Trading Area ("MTA").

Some LECs also impose inappropriate landline rating and routing notions to CMRS traffic, resulting in a unilateral LEC imposition of highly inefficient interconnection arrangements. The Commission must act to reaffirm its rules that recognize the unique, non-landline nature of CMRS service and require ILECs not to handicap wireless network operations by imposing unreasonable and unnecessary restrictions on CMRS interconnection.

Critical to the Commission's actions in this proceeding is an appreciation that CMRS carriers and ILECs simply do not have equal bargaining power. Bill and keep is a reasonable form of compensation for the mutual and reciprocal exchange of CMRS and incumbent LEC traffic because it addresses ILEC market power and can reduce many of the inefficiencies in the current interconnection negotiation process. As the relative exchange of traffic between CMRS carriers and ILECs is gradually coming into balance, bill and keep ought to be presumed as the

reasonable rate for the exchange of intra-MTA traffic. If an ILEC objects to this form of reciprocal compensation, then payment based on each carrier's termination costs ought to be the requirement, unless the CMRS carrier agrees to symmetrical payment based on ILEC costs. This framework starts with a presumption of no net payment, which is appropriate for today's CMRS-ILEC exchange of traffic.

Finally, in implementing a bill and keep regime, the Commission should not permit ILECs to recover their interconnection costs attributable to CMRS interconnection, if any, from their end-users on a "deregulatory" no holds barred approach. The reality is that ILEC interconnection for termination of a CMRS call imposes no greater cost per call termination than interconnection with other carriers and it is foreseeable that ILECs may prefer to make a pricing distinction between on network and off-network pricing to end user customers. Allowing ILECs such "flexibility" essentially would allow ILECs to use bill and keep as a pretext to discriminatorily price calls to CMRS carrier customers. It is hard to imagine a more anti-competitive result in a setting where the Commission is seeking to foster additional facilities-based service alternatives.

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**REPLY COMMENTS OF TRITON PCS LICENSE COMPANY L.L.C.**

Triton PCS License Company, L.L.C., ("Triton"), by its attorneys, hereby files replies to comments filed by other parties in the Federal Communication Commission ("FCC" or "Commission") *Notice of Proposed Rulemaking* on Intercarrier Compensation (*"Notice"*).[1] The Commission's broad-ranging initiative has garnered the attention of numerous commenters, many of whom are concerned that the FCC's proposals overstep the legal bounds of its authority and that they will not advance fair and full competition in U.S. telecommunications markets.

Triton's interest in this proceeding is as an existing Commercial Mobile Radio Services ("CMRS") provider. As a regional provider with a strong presence in the southeastern United States, Triton has a number of interconnection agreements with large, incumbent local exchange carriers and with smaller, more rural local exchange carriers.

As discussed in Triton's initial comments, the existing landline interconnection framework inadequately addresses the unique issues posed in CMRS-to-incumbent LEC interconnection and perpetuates a situation where CMRS carriers and ILECs are needlessly and

[1] Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92, *Notice of Proposed Rulemaking*, FCC 01-132 (rel. April 27, 2001) ("*Notice*").

unproductively expending resources to measure traffic and bill one another for the reciprocal exchange and termination of telecommunications. The Commission can advance the potential for facilities-based competition by ensuring that incumbents, who need interconnection far less than other carriers, do not abuse interconnecting carriers by insisting on actual compensation where bill and keep compensation would be a reasonable surrogate and by prohibiting ILECs from using bill and keep as an excuse to erect additional anti-competitive barriers to competition.

## I. THE FCC HAS BOTH LEGAL AUTHORITY AND STRONG POLICY REASONS FOR TAKING IMMEDIATE ACTION CLARIFYING ITS RULES FOR CMRS-ILEC INTERCONNECTION

In its *Notice* the Commission recognized that, while there may be some benefits to a uniform system of intercarrier compensation, there may also be disadvantages.[2] There is no disputing that there are a range of different inter-carrier interconnection arrangements in place today. ILECs, for example, interconnect with other ILECs and provide one another transit services. ILECs also interconnect with competitive LECs and CMRS providers under the reciprocal compensation framework specified by the Commission in its *Local Competition Order*.[3] Competitive LECs interconnect with one another without regulatory oversight, while ILECs and interexchange carriers interconnect using a system of interstate and intrastate one-way access charges originally developed at the time of the Bell System divestiture. Internet backbone service providers typically interconnect to exchange traffic for termination to their

[2] *See Notice* at ¶¶ 58-65.

[3] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, *First Report and Order*, 11 FCC Rcd. 15499 (1996) ("*Local Competition Order*"), *aff'd in part and vacated in part sub nom. Competitive Telecommunications Ass'n v. FCC,* 117 F.3d 1068 (8th Cir. 1997) and *Iowa Utils. Bd. v. FCC*, 120 F.3d 753 (8th Cir. 1997), *aff'd in part and remanded*, *AT&T v. Iowa Utils. Bd.*, 525 U.S. 366 (1999).

respective customers by using "peering" arrangements, also known as bill and keep compensation arrangements. Trying to meld some or all of these arrangements into a single compensation framework is an extremely challenging endeavor and is not necessary at this time. Instead, the Commission should do what it reasonably can now in each market segment to rationalize interconnection compensation, recognizing that it can do this more immediately in some market segments than in others.

CMRS carriers also typically maintain a variety of interconnection relationships with other carriers. While the *Notice* and certain CMRS carrier comments in this proceeding note that there are outstanding issues relating to interexchange carrier payment of access charges to CMRS carriers, the most significant interconnection issue facing CMRS carriers is the terms of their interconnection with ILECs. Unlike CLEC or CMRS-to-CMRS interconnection, where there is mutual cooperation and recognition of a joint benefit from interconnection, ILECs have no strong incentive to cooperate in interconnection matters with CMRS providers. While ILEC landline customers derive benefits from being able to call CMRS customers, ILECs perceive no reason to treat CMRS carriers as true, facilities-based co-carriers entitled to full co-carrier rights similar to those of ILECs. This attitude persists, despite years of Commission efforts prior to the passage of the 1996 Act to improve the climate for fair interconnection practices between CMRS providers and ILECs and five years of operation under the Commission's landline interconnection framework established under the auspices of the 1996 Act.

The record already compiled in this proceeding illustrates the problem. Many state commissions, ILEC trade associations and small and rural ILECs filed comments opposing nearly any form of intercarrier compensation reform hospitable to the Commission's bill and keep model. Many, to interpose delay in the reform process, counsel the Commission to do

nothing at all rather than take any action mandating bill and keep for *any* telecommunications traffic.

Perhaps most troubling are the comments by smaller and rural ILECs that address matters of particular concern to CMRS carriers. Many of these incumbents bluntly oppose and reinterpret existing CMRS-specific interconnection rules and seek Commission blessing on their practice of imposing one-way, access charges on the termination of all CMRS traffic.[4] And small rural ILECs are not the only commenters hostile to the current CMRS-ILEC interconnection regime: SBC's comments highlight its policy of treating interconnected CMRS traffic originated and terminated within the LATA – an area typically smaller than an MTA - as one-way access traffic.[5]

The fact that ILECs openly are ignoring established FCC regulations addressing the special interconnection issues facing CMRS carriers demonstrates the immediate need for the Commission to act to clarify the application of existing rules and policies. It is plain that without immediate clarification, ILECs will continue unreasonable CMRS interconnection practices. ILEC comments demonstrate that CMRS carriers in the market today have problems getting ILECs to honor current Commission requirements. This situation calls out for an immediate solution. The Commission cannot wait three or four years to resolve every other complicated issue raised by intercarrier compensation before dealing with current CMRS interconnection issues.

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[4] *See* Comments of the Missouri Small Telephone Company Group at 9 *see also* Comments of Ronan Telephone Company and Hot Springs Telephone Company at 8-9.

[5] *See* Comments of SBC Communications Inc. at 18-19 ("SBC and other ILECs have taken the position that they are entitled to be compensated for the additional cost of transporting traffic beyond the local exchange area to a single POI (point of interconnection) in a LATA.")

And beyond mere clarification of existing policies and rules, there is no persuasive reason any commenter has offered to delay the benefits of adopting bill and keep as the model or default rule for the exchange of CMRS –ILEC traffic. Waiting indefinitely simply to act "uniformly" on reforms of diverse intercarrier compensation regimes is not only unnecessary, it would be shortsighted. It also may delay the emergence of CMRS as a competitive alternative to ILEC landline service.

The reasons several commenters proffer in favor of delay and uniform Commission action do not pose serious obstacles to immediate Commission action on CMRS interconnection. As an initial matter, CMRS interconnection is undeniably a matter of substantive federal jurisdiction.[6] Thus, the jurisdictional obstacles to action that may stall rapid consideration of bill and keep for landline local and long distance interconnection simply are not present here. Second, on a practical level, requiring bill and keep for CMRS-ILEC traffic exchange would have a minimal relative impact on ILECs. In contrast, for CMRS carriers, a whole range of traffic exchange monitoring and accounting costs could be saved and the savings put to immediate use by both CMRS carriers and ILECs in providing their customers with new network infrastructure and services.

[6] Notably, the only commenter to challenge directly this legal conclusion was the Public Utilities Commission of California ("CAPUC"). The CAPUC analysis entirely ignored the impact of a very significant revision to the Communications Act of 1934, as amended, namely the revision to section 2(b), the threshold jurisdictional section of the Act. In 1993, Congress specifically amended section 2(b) to provide the Commission with full substantive jurisdiction over regulation of CMRS providers, including matters related to CMRS interconnection. While the Commission has only recently begun to exercise this full jurisdiction, the CAPUC inexplicably appears not to understand that state jurisdiction over CMRS service is fundamentally different than over landline carriers. *See* Comments of the People of the State of California and the California Public Utilities Commission at 10-13.

A number of state commissions filed comments expressing substantial concerns about any Commission action mandating bill and keep for any interconnection arrangement subject to the Section 251 and Section 252 state approval and arbitration process.[7] Plainly, the concerns expressed are largely related to the potential impact on ILEC residential end user rates of replacing one way access charge revenues with reciprocal bill and keep compensation payments. This concern is not at all related to clarification or even tweaking of the reciprocal compensation obligation that already exists between CMRS carriers and ILECs. Indeed, the general lack of state commission comment or engagement on CMRS-related issues strongly suggests the FCC's legal theory of exclusively federal authority over CMRS interconnection as discussed in the *Notice*, and as recently upheld by reviewing courts, is correct. While some state commissions may view the Commission's actions as unwise, CMRS interconnection compensation is not their main preoccupation.

In fact, some state commission comments illustrate exactly why the Commission is compelled to take specific action on CMRS interconnection matters now: to prevent CMRS carriers from being whipsawed between federal rules that promote competition and state commission actions that protect the revenues of rural or small ILECs. The comments filed by rural ILECs and rural ILEC trade groups demonstrate that these carriers are intent on achieving regulatory protection from their various states from having to comply with straightforward federal interconnection rules. Immediate Commission action is required.

[7] *See, e.g.,* Comments of Regulatory Commission of Alaska at 7; CAPUC Comments at 10-13; Comments of the Public Service Commission of the State of Missouri at 3; Comments of Iowa Utilities Board at 5.

## II. BILL AND KEEP SHOULD APPLY ON AN MTA-WIDE BASIS FOR THE EXCHANGE OF CMRS-ILEC TRAFFIC

The Commission has had occasion to address the scope of the geographic area a CMRS carrier can originate and terminate traffic and expect that this traffic will be exchanged under reciprocal termination obligations with interconnecting ILECs. That area is the Major Trading Area ("MTA").[8]

In addressing this issue, SBC, Qwest and a number of rural ILECs all appear to believe that the rule cannot mean what it says. They attempt to read in a limitation on ILEC reciprocal compensation obligations if the ILEC does not happen to have local facilities that are MTA-wide. In other words, these ILECs refuse to provide reciprocal treatment for any traffic that originates or terminates outside of their individual landline networks. This unsupported interpretation ignores both the Commission's stated rationale in adopting the rule and the plain meaning of the rule. The Commission stated that because CMRS "local" calling areas do not correspond to landline calling areas, there is a need for a CMRS-specific rule.

If the Commission were to condone by its inaction this unilateral rule reinterpretation by ILECs, it would penalize CMRS networks in a manner that it previously expressly refused to do when it adopted an otherwise uniform national interconnection framework. Continued inaction also would allow ILECs unilaterally to impose inefficient and unnecessary costs on CMRS carriers, who must pay the additional facilities or transport charges to route traffic to ILECs at their preferred point of interconnection. The issue of the ILEC's legal obligation to interconnect

[8] *See* 47 C.F.R. § 51.701(b)(2)(defining telecommunications traffic as "traffic exchanged between a LEC and a CMRS provider that, at the beginning of the call, originates and terminates within the same Major Trading Area, as defined in §24.202(a) [of the Commission's rules]").

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for the exchange of traffic must be dealt with regardless of whether the Commission adopts bill and keep, as the issue in this instance is the scope of the ILEC reciprocal transport and termination obligation.

In its service area, for example, Triton is receiving some pressure from a major ILEC to disrupt a longstanding and never before controversial practice of separating the routing of a call exchanged under reciprocal compensation arrangements from the rating – pricing – of the call. This practice permits a CMRS provider to offer its customers local telephone numbers across its service territory, even though the CMRS carrier may have only a single switch. Unless the Commission seeks to impose all the inefficiencies of legacy landline operation on wireless carriers, it must confirm that there need not be a direct correlation of landline routing and rating information in the context of CMRS-ILEC interconnection arrangements.

Another issue the Commission must address, regardless of its decision on bill and keep, is that many ILECs are beginning to insist, regardless of the economic rationality of the arrangement, on direct physical interconnection with CMRS carriers. As Triton stated in its initial comments, in many cases, indirect interconnection between CMRS carriers and some smaller ILECs is far more efficient given the relative volume of traffic exchanged.[9] This means

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terminates within the same Major Trading Area, as defined in §24.202(a) [of the Commission's rules]").

[9] One instance of this is illustrated by the Sprint PCS Petition for Declaratory Ruling regarding the interconnection practices of Brandenburg Telephone Company ("Brandenburg"). *See Petition for Order Directing Brandenburg Telephone to Provide Interconnection on Reasonable and Non-Discriminatory Terms* of Sprint Spectrum L.P., d/b/a Sprint PCS, at 12-14 (filed September 18, 2001) ("Petition"). Sprint PCS interconnects with Verizon in Elizabethtown, Kentucky and has two NXX codes rated in the Elizabethtown rate center. Brandenburg's Radcliff and Vine Grove, Kentucky exchanges are adjacent to Verizon's

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that ILECs cannot refuse to provide the transit services they have traditionally provided, as withdrawal of this option for CMRS carriers would stop the existing flow of CMRS traffic to and from the customers of these ILECs.[10]

In addition to the economic reasons why continued availability of transit arrangements are so critical, there are significant practical reasons. It would be inherently wasteful of resources for CMRS carriers to have literally hundreds of interconnection agreements for the relatively insubstantial amounts of traffic that is exchanged between a CMRS carrier and an ILECs indirectly through transit arrangements. The Commission should address this issue and uphold the existing legal rights of carriers, such as CMRS providers, to use sound business judgment in determining whether and when they should interconnect directly.[11]

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Elizabethtown exchange, and the Elizabethtown exchange is within the local calling area of the Radcliff and Vine Grove exchanges. As Sprint PCS demonstrates in its Petition, the traffic volumes between Sprint PCS and Brandenburg's Radcliff and Vine Grove exchanges are not large enough to justify a direct interconnection. Consequently, Sprint PCS proposed indirect interconnection using the existing trunk capacity between Radcliff and Elizabethtown. Brandenburg refused the request and demanded that Sprint PCS interconnect directly and pay the entire cost of the 15-mile trunk group connecting Elizabethtown and Radcliff. Sprint PCS's Petition demonstrates the inefficiencies that result in cases where traffic volume is not large enough to justify direct interconnection with ILECs for terminating traffic.

[10] Some ILECs seek to impose an inappropriate access arrangement known as "meet point billing" on CMRS carriers currently using a transiting arrangement. CMRS carriers should not be forced into these unwieldy arrangements as a substitute for transiting.

[11] *See* 47 U.S.C. § 201(a) (providing that it is "the duty of every common carrier engaged in interstate or foreign communication by wire or radio to furnish such communication service upon reasonable request therefore; and in accordance with the orders of the Commission, in cases where the Commission, after opportunity for hearing, finds such action necessary or desirable in the public interest, to establish physical connections with other carriers, to establish through routes and charges applicable thereto and the divisions of such charges, and to establish and provide facilities and regulations for operating such through routes."); *see also Woodlands Telecommunications Corp. v. Am. Tel. and Tel. Co. and Southwestern Bell Tel. Co.*, 447 F. Supp. 1261, 1265 (S.D. Tex. 1978) ("A carrier's decision to interconnect or refuse to interconnect is a

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## III. BILL AND KEEP COMPENSATION FOR ALL CMRS-ILEC INTRA-MTA TRAFFIC WOULD BE REASONABLE AND EFFICIENT

The comments demonstrate that the Commission has sound reasons for adopting bill and keep for CMRS-ILEC interconnection but they also demonstrate that the public interest would not be served by adopting either theoretical model discussed in the *Notice* for dividing "inter-network" costs of physical interconnection. Indeed, many CMRS commenters noted that it is critical that any form of bill and keep be optimized so that its full benefits can be realized.

Bill and keep would significantly reduce inefficiencies in the interconnection negotiation process and allow carriers to price their services based on their own costs, without the additional costs imposed by other carrier's interconnection arrangements. As Triton and other CMRS commenters explain in their comments, CMRS carriers do not have equal bargaining power with any ILEC and each ILEC has every incentive and ability to withhold reasonable interconnection terms to make all carriers fight each disputed point at each state commission through an incredibly lengthy and expensive arbitration and appeals process. Verizon Wireless aptly observed that under the current framework, "the carrier with the lowest cost structure may not be the most efficient, but rather the most litigious."[12]

The *Notice* offered two theoretical models to consider for defraying or dividing the cost of inter-network physical interconnection within the bill and keep interconnection

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matter of business judgment which is not subject to section 201(a) unless, after a refusal, the FCC directs such interconnection."); Cellnet Communications, Inc. v. New Par, Inc. d/b/a Cellular One, *Order*, 15 FCC Rcd. 13814, ¶ 8 (2000) (holding that the refusal of switch interconnection is not an unreasonable restriction on resale since the refusal to interconnect is not anti-competitive and is not required by the public interest).

[12] Comments of Verizon Wireless at 19.

framework: the COBAK and the BASICS models. Triton agrees with the comments of Verizon Wireless that neither model provides the proper mix of incentives necessary to promote long term efficiencies.[13] The most immediate practical problem with the COBAK model is that it would require regulatory bodies – most likely 50 individual state commissions – to determine on a case-by-case basis what is a "central office."[14] This problem alone eliminates the efficiency of a bill and keep framework, as it will not reduce the need for negotiations, arbitrations and the potential for disputes.

The other obvious problem with the COBAK model as imposed on CMRS-ILEC interconnection is that it will do absolutely nothing to equalize bargaining power between monopoly interconnection provider ILECs and CMRS carriers. Interconnection today for the ILECs typically has to be at the CMRS carrier's Mobile Switching Center ("MSC"), and the MSC serves a geographic area far wider than an ILEC central office switch. Any change to another system would impose massive additional transport costs on CMRS carriers without any offsetting public benefit. COBAK would simply provide ILECs with the wrong incentives.

BASICS also would require significant regulatory intervention because it would require state commissions or this Commission to determine what constitutes incremental interconnection facilities and costs that are to be split between interconnectors. Fundamentally, each of these models are not competitively neutral when applied to CMRS-ILEC

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[13] *See id.* at 22-24.

[14] The Commission's COBAK model would have each carrier bill its own end user for all additional costs associated with terminating a call. The calling party's network would be responsible for the cost of transporting a call between the calling party's central office and the called party's central office but would be a "default" model that would be used if parties could not agree to other arrangements.

interconnection: they directly harm CMRS and other ILEC competitors and provide a windfall to ILECs.

If there were any doubt on this subject, it is dispelled by the economic research several commenters have provided to the Commission. Time Warner Telecom, for example, attached an analysis of COBAK from Dr. Joseph Farrell, a former Chief Economist at the Commission. Fundamentally, Farrell states that COBAK relies upon two special assumptions – symmetry of marginal costs between networks and symmetry of demand between calling and called party – that are unlikely to be satisfied in practice. COBAK also depends upon the assumption that carriers' traffic sensitive retail markups will be equal, when in fact these markups depend on carrier marketing strategies and market power.[15] For these reasons, Farrell concludes that COBAK cannot and should not be the basis for a real-world interconnection framework.

If that were not convincing enough, Worldcom's comments contained an attachment from the former Commission economist, Patrick DeGraba, who authored the COBAK paper while working at the Commission. This paper states that any implementation of COBAK would have to account for the fact that ILECs control essential facilities and possess market power. DeGraba concludes that without appropriate constraints ILECs could use their market power in a variety of ways to disadvantage rivals.[16]

Plainly, the Commission's generalized theories regarding interconnection are flawed in that they do not account in any way for the incentives of the near monopoly interconnector in

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[15] *See* Comments of Time Warner, at Exhibit 1, "Analysis of Central Office Bill and Keep," Dr. Joseph Farrell and Dr. Benjamin E. Hermalin, August 2001 at 1.

[16] *See* Comments of Worldcom, at Attachment Declaration of Patrick DeGraba, Charles Rivers Associates, "Implementing Bill and Keep Intercarrier Compensation When Incumbent LECs Have Market Power," at 2.

negotiating interconnection. From Triton's perspective as the party without the bargaining advantage in a negotiation, the Commission's models fail to promote the Commission's stated goals.

As relative exchange of traffic between CMRS carriers and ILECs is gradually coming closer towards balance, bill and keep ought to be presumed to be the reasonable rate for exchange of traffic. Where an ILEC wants to collect its actual costs, then the FCC must permit, on some streamlined basis, the opportunity for a CMRS carrier to collect its actual costs of call termination, which generally are higher than the ILECs. Thus, the Commission ought to maintain some backstop that permits carriers to recover their respective traffic sensitive costs of call termination if they cannot agree to bill and keep. The Commission might consider using some of the cost information Sprint PCS has developed and submitted to various state public service commissions to adopt a CMRS "proxy" traffic sensitive cost that could be used by broadband CMRS carriers in the absence of carrier-specific cost studies.[17]

For CMRS-ILEC traffic, the Commission's approach should be to start out with a presumption that traffic is roughly balanced and that therefore bill and keep is appropriate. If an ILEC objects to this form of reciprocal compensation, then asymmetric payment ought to be the requirement, unless the CMRS carrier agrees to symmetrical payment based on ILEC costs. This framework places the incentives in the right place – if ILECs can continue to insist on symmetrical payment based on their costs they will continue to do so. Every effort should be made in setting up this framework to streamline and centralize the negotiation and dispute

[17] This is exactly the approach the Commission took in its *Local Competition Order,* where it adopted a per minute, traffic sensitive reciprocal compensation rate taken from various

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resolution process. Failure to take these steps will adversely impact the still – developing CMRS-ILEC interconnection relationship.

## IV. THE FCC CANNOT PERMIT " DEREGULATION" OF ILEC END USER PRICING OR ILEC TRANSPORT RATES

In its comments, SBC supports the thrust of the Commission's efforts towards establishing bill and keep as an overall framework for intercarrier compensation. Its support, however, is premised on an unacceptable and anticompetitive idea, namely that in return for accepting bill and keep compensation, SBC should have deregulated "flexibility" in the recovery of its interconnection costs from end users. SBC's qualified endorsement of bill and keep starkly illustrates the concern Triton expressed in its comments: that ILECs not use CMRS bill and keep as a pretext to discriminatorily price calls to CMRS carriers or other carriers. SBC, in seeking its flexibility, does not disclaim that its version of flexibility might include end user pricing discrimination that would lead to grossly anticompetitive results. For example, SBC could attempt to offer different pricing for on-network versus off-network calls. It could try to differentiate its charges based on the identity of the network called – CMRS versus landline local or interexchange networks.

ILEC termination of a CMRS call imposes no more cost per call termination than interconnection with other carriers. Discriminating between interconnected calls and on-network calls would be extremely detrimental to the development of competition as SBC's extremely large subscriber base already provides SBC with a large "network" advantage over any other

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*continued. . .*

state Commission proceedings that could be applied on an interim basis pending development of ILEC-specific cost studies. *See Local Competition Order* at ¶ 1066.

carrier. The Commission must reject SBC's "flexibility" play unless it is unconcerned about developing additional facilities-based alternatives to the ILECs for local services.

Finally, as several CMRS commenters point out, ILEC transit transport is an absolutely essential element of ubiquitous, end-to-end CMRS to ILEC calling capability. ILECs should not be provided with flexible pricing relief when they are the only parties that have the capability of providing transit transport. Accordingly, their rates for this service should not be deregulated.

## V. CONCLUSION

The Commission should do what it can do immediately to adopt a regime of bill and keep interconnection between CMRS carriers and ILECs. It must also clarify aspects of its existing rules regarding MTA-wide reciprocal compensation and interconnection via indirect arrangements and transit. The Commission should take this proceeding as another opportunity to foster a number of independent, interconnected networks supporting competing facilities-based service providers.

Respectfully submitted,

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